

ESTTA Tracking number: **ESTTA547578**Filing date: **07/10/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Insight Pharmaceuticals, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	900 Northbrook Corporate Center Suite 200 Trevose, PA 19053 UNITED STATES		

Attorney information	MICHELINE KELLY JOHNSON BAKER, DONELSON, ET AL. 633 CHESTNUT ST., STE 1800 CHATTANOOGA, TN 37450-1800 UNITED STATES mjohnson@bakerdonelson.com, rdorer@bakerdonelson.com, asanders@bakerdonelson.com, trademarks@bakerdonelson.com Phone: 423-209-4103
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Applicant Information

Application No	85527113	Publication date	06/11/2013
Opposition Filing Date	07/10/2013	Opposition Period Ends	07/11/2013
Applicant	Despharma Kft. Pagony u. 50. Budapest, 1124 HUNGARY		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: COSMETICS
Class 005. All goods and services in the class are opposed, namely: PHARMACEUTICAL PREPARATIONS FOR SKIN DISORDERS; VETERINARY PREPARATIONS FOR SKIN DISORDERS; SANITARY PREPARATIONS FOR MEDICAL PURPOSES; PLASTERS FOR MEDICAL PURPOSES; DISINFECTANTS FOR SANITARY PURPOSES, NAMELY, DISINFECTANTS FOR SKIN INFECTIONS AND WOUND DISINFECTION
Class 010. All goods and services in the class are opposed, namely: SKIN CARE MEDICAL DEVICES, NAMELY, MEDICAL DEVICES ACTING BY BIOPHYSICAL, MECHANICAL AND THERMAL MEANS FOR TREATING SKIN DISORDERS

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Dilution	Trademark Act section 43(c)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3626182	Application Date	09/08/2008
Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	DERMAREST		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1987/01/30 First Use In Commerce: 2000/12/31 non-medicated skin care preparations, namely, moisturizing scar removing lotions and stretch mark repair</p> <p>Class 005. First use: First Use: 1987/01/30 First Use In Commerce: 2000/12/31 medicated hair care preparations, namely, medicated shampoo, medicated hair conditioners; medicated skin care preparations, namely, medicated skin moisturizers, medicated scalp moisturizers, and medicated body lotions, all for the treatment of eczema or psoriasis; dermatological preparations for balancing skin tones and reducing the redness associated with Rosacea</p>		

U.S. Registration No.	4261139	Application Date	04/30/2012
Registration Date	12/18/2012	Foreign Priority Date	NONE
Word Mark	DERMAREST		
Design Mark			
Description of Mark	The mark consists of the word Dermarest stylized with a curved bar above the letters rest.		
Goods/Services	Class 005. First use: First Use: 2012/04/16 First Use In Commerce: 2012/04/16 medicated hair care preparations, namely, medicated shampoo, medicated hair conditioners; medicated skin care preparations, namely, medicated skin moisturizers, medicated scalp moisturizers, and medicated body lotions, all for the treatment of eczema or psoriasis		

Attachments	Insight Pharmaceuticals LLC v Despharma Kft.pdf(81749 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/micheline kelly johnson/
Name	MICHELINE KELLY JOHNSON
Date	07/10/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

INSIGHT PHARMACEUTICALS, LLC

Opposer,

v.

DESPHARMA KFT.

Applicant.

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Opposition No.: _____

Serial No. 85/527,113

NOTICE OF OPPOSITION

Insight Pharmaceuticals, LLC is a Delaware limited liability company, having a principal place of business at 900 Northbrook Corporate Center, Suite 200, Trevose, Pennsylvania 19053 (hereinafter "Opposer"). Opposer asserts that it would be damaged by registration of the mark DERMARAL as shown in U.S. Trademark Application Serial No. 85/527,113 (the "Application" or "'113 Application") for the products and services identified therein and hereby opposes registration of said mark pursuant to Section 2(d) of the Lanham Act.

To the best of Opposer's knowledge, the name and address of the current owner of the '113 Application is Despharma Kft., a corporation of Hungary with an address of record at Pagony u. 50, Budapest, Hungary 1124. To the best of Opposer's knowledge, the Application was filed on January 27, 2012 and published for opposition on June 11, 2013.

As grounds for this Opposition, Opposer alleges:

1. Opposer is the owner of U.S. Trademark Registration No. 3,626,182 and 4,261,139 for DERMAREST for "non-medicated skin care preparations, namely moisturizing scar removing lotions and stretch mark repair" in International Class 03 and "medicated hair care preparations, namely medicated shampoo, medicated hair conditioners; medicated skin care preparations, namely medicated skin moisturizers, medicated scalp moisturizers, and medicated body lotions, all for the treatment of eczema or psoriasis; dermatological preparations for

balancing skin tones and reducing the redness associated with rosacea in International Class 05” with a first use in commerce date of January 31, 2000 (the “‘182 and ‘139” Registrations”).

2. The ‘182 and ‘139 Registrations are valid and subsisting and remain in full force and effect as evidence of the validity of Opposer’s exclusive right to own and use the mark at issue in connection with the goods specified in the Registrations.

3. Since at least as early as January 31, 2000, Opposer and its predecessor in interest have used the DERMAREST trademark in connection with products, sales of products, and advertising and promotion of products throughout the United States. These products include non-medicated skin care preparations and medicated hair, skin care, dermatological and body lotion preparations, including preparations for the treatment of eczema or psoriasis.

4. As a result of the investment of significant resources and effort over time, Opposer’s DERMAREST trademark has become distinctive. Consumers have come to know, rely on, and recognize it as an indication of a high-quality pharmaceutical product. Thus, Opposer enjoys valuable goodwill in the DERMAREST mark.

5. Opposer’s DERMAREST trademark has become famous pursuant to 15 U.S.C. § 1125.

6. Applicant’s application for registration of DERMARAL, Serial No. 85/627,113, includes “cosmetics” in International Class 003, “pharmaceutical preparations for skin disorders; veterinary preparations for skin disorders; sanitary preparations for medical purposes; plasters for medical purposes, disinfectants for sanitary purposes, namely, disinfectants for skin infections and wound disinfection” in International Class 05, and “skin care medical devices, namely, medical devices acting by biophysical, mechanical and thermal means for treating skin disorders” in International Class 10.

7. Applicant’s Mark is very similar to Opposer’s DERMAREST trademark in appearance and commercial impression, in that it contains the word “DERMA-” followed by a single syllable beginning with the letter “R”. Both marks cover goods in International Classes 03 and 05.

8. Opposer asserts that Applicant's use of DERMARAL will likely cause confusion, mistake, or deception in the minds of consumers as to the source or origin of goods sold under either the DERMAREST or DERMARAL marks, in violation of Section 2(d) of the Lanham Act. Persons familiar with Opposer's DERMAREST trademark would be likely to purchase Applicant's goods believing them to be new forms of the well-known products of Opposer. This assertion is reinforced by the fact that Applicant's goods are being advertised for use in treatment of skin disorders. Although the application does not specify a specific skin disorder, Opposer has reason to believe ingredients found in DERMARAL "preparations for skin disorders" are sometimes used to treat the "eczema or psoriasis" skin disorders specified in its DERMAREST registrations.

10. If Applicant is permitted to register the DERMARAL mark, any defect or deficiency found with Applicant's goods marketed under Applicant's mark would reflect negatively upon and seriously injure the reputation of Opposer's goods.

11. Applicant's use of DERMARAL is also likely to dilute the distinctive quality of Opposer's DERMAREST trademark.

12. If Applicant is granted the registration for DERMARAL herein opposed, it would thereby obtain a *prima facie* exclusive right to the use of its mark. Such registration would be a source of considerable damage and injury to Opposer.

WHEREFORE, Petitioner prays that, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, U.S. Trademark Application Serial Nos. 85/527,113 be denied in its entirety.

Respectfully submitted,

Dated: July 10, 2013

/Micheline Kelly Johnson/

Micheline Kelly Johnson
Attorney for Opposer Insight Pharmaceuticals, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, via First Class Mail, on this 10th of July, 2013 to the following:

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/Micheline Kelly Johnson/

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